

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1777 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

VEDVA VAGRI KALABHAI JUTHABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

The petitioner came to be detained by an order passed by the District Magistrate, Bhavnagar on 16.2.99 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA Act for short).

2. The Detaining Authority considered in the grounds of detention the fact that the petitioner is booked for as many as 11 offences under Bombay Prohibition Act. The Detaining Authority also took into consideration the

statements of 3 witnesses narrating certain incidents which they witnessed but failed to lodge a complaint therefor out of fear of the petitioner. The Detaining Authority after taking into consideration the material before it came to a conclusion that the petitioner was a bootlegger and was indulged in anti-social activities. The detaining Authority was also subjectively satisfied about the fact that the petitionenr used force and threat to puruse his illegal and anti-social activities and therefore it was necessary to restrain him from doing such activities. The Authority considered that the petitioner is a bootlegger acting in a high handed manner and the apprehension expressed by the witnesses was genuine and correct and therefore the Detaining Authority excercised powers under Section 9(2) of the PASA Act and did not disclose the names of the witnesses claiming privilege. The Detaining Authority considered that produceedings under Section 93 of the Bombay Prohibition Act, 1949 and externment proceedings under Bombay police Act, 1951 may not help the authority in preventing the petitionenr from purusing his illegal and anti-social activities. The Authority therefore ultimately arrived at a satisfaction that detention under the PASA Act is the only remedy for the purpose and therefore passed the order.

3. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India and has challenged the legality and validity of the detention order of various courts. One of them being that there is non-application of mind by the Detaining Authority by not considering the less drastic remedy of getting the petitioner's bail cancelled by approaching a Court with an application of Section 437(5) of Criminal Procedure Code.

4. Ms.Patel, Ld. Advocate appearing for the petitioner has restricted her arguments on this count alone and submitted that the order in question suffers from defect of non application of mind and therefore may be quashed and set aside and the petition may be allowed.

5. Mr.H.H.Patel, Ld. AGP has opposed this petition. According to him, the Detaining Authority has taken into consideration all the relevant aspects and has thereafter arrived at a subjective satisfaction about the petitioner being a bootlegger and that his activities resulted into disturbance in public order and that detention under PASA was the only remedy from preventing him from pursuing his illegal and anti-social activities. There is no need therefore to interfere in the order and the petition may

therefore be dismissed.

6. If the rival side contentions are considered in light of the detention order and the ground of detention produced on record, it is clear that the detaining authority has not taken into consideration the available less drastic remedy in the nature of getting the bail of the petitioner cancelled. The Authority could have considered this aspect of resorting to that remedy before coming to a subjective satisfaction that detention under PASA was the only available remedy. This reflects clear non-application of mind by the Detaining Authority. The order therefore would be vitiated. In this regard, a decision of the Division Bench of this Court in LPA 1056 of 1999 in SCA 8650 of 1997 in the case of Yunusbhai Husanbhai Ghanchi Vs. District Magistrate dated 16th September, 1999 may profitably be used. In that case, the Court took a view that non-consideration of aspect of cancellation of bail can be termed non-application of mind and that it would vitiate the order of detention. In this view of the matter, the petition deserves to be allowed. The order impugned deserves to be quashed and set aside.

7. The petition is therefore allowed. The order of detention passed by District Magistrate, Bhavnagar on 15.2.1999 in respect of petitioner Vedava Vaghri Kalubhai Juthabhai is hereby quashed and set aside. The petitioner be set at liberty forthwith if not required in any other case. Rule made absolute accordingly. No Costs.

(A.L.Dave, J)

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